



**POLICY FOR EMERGENCY ORDERS
ENFORCING BUILDING, EQUIPMENT, AND FIRE SAFETY LAWS**

I. VERSION

Version 1. Drafted by Justin Guedel, Indiana Department of Homeland Security (IDHS) Deputy General Counsel on July 13, 2021.

II. PURPOSE

This policy establishes guidelines for:

- (1) issuing emergency orders by the IDHS;
- (2) expiration and renewal of emergency orders;
- (3) rescinding or finding compliance with emergency orders;
- (4) administrative review of emergency orders;
- (5) alternatives to the issuance of an emergency order;
- (6) emergency orders resulting in a fire watch; and
- (7) emergency orders issued by fire departments.

III. SCOPE

This policy pertains to the issuance of emergency orders by:

- (1) the IDHS, under Ind. Code 22-12-7-6, in relation to the enforcement of building, equipment, or fire safety laws and;
- (2) fire departments under Ind. Code § 36-8-17-9, in relation to the enforcement of fire safety laws.

IV. DEFINITIONS

“Building law” means any equipment law or other law governing any of the following:

- (1) Fabrication of an industrialized building system or mobile structure for installation, assembly, or use at another site.
- (2) Construction, addition, or alteration of any part of a Class 1 or Class 2 structure at the site where the structure will be used.
- (3) Assembly of an industrialized building system or mobile structure that is covered by neither subdivision (1) nor (2).
- (4) Sanitary conditions and sanitary facilities:
 - (A) in Class 1 structures, or portions of Class 1 structures that are used for educating at least six (6) persons at any one (1) time, from any grade level or combination of grade levels from grade 1 through grade 12; and
 - (B) on the grounds of a structure described in clause (A).

Ind. Code § 22-12-1-3.

“Equipment law” means a statute or rule under this article, IC 22-13, or IC 22-15 that applies to the design, manufacture, fabrication, assembly, installation, alteration, repair, maintenance, operation, or inspection of a regulated amusement device, boiler, lifting device, or pressure vessel. Ind. Code § 22-12-1-11.

“Fire safety law” means any building law, equipment law, or other law safeguarding life or property from the hazards of fire or explosion. Ind. Code § 22-12-1-13.

“Law” includes any statute, rule, ordinance, or other regulation. Ind. Code § 22-12-1-15.

“Emergency order” means an order that takes effect immediately. An order issued in accordance with Ind. Code § 22-12-7-6 or Ind. Code § 36-8-17-9(b).

V. OVERVIEW OF EMERGENCY ORDERS

Emergency orders are orders that take effect immediately. Generally, these orders are effective without notice or an evidentiary proceeding. See Ind. Code § 4-21.5-4-2(a)(1). However, these orders may also be issued after a hearing conducted by an administrative law judge. See Ind. Code § 4-21.5-4-2(a)(2). These orders are not required to contain the same contents as nonemergency orders issued under Ind. Code Chapter 4-21.5-3 and are only required to contain a “brief statement of the facts and the law that justifies the agency’s decision to take the specific action.” Ind. Code § 4-21.5-4-2(b).

Pursuant to Ind. Code § 22-12-7-6, the IDHS may only issue emergency orders under the following circumstances:

- (1) Where conduct or a condition of property presents a clear and immediate hazard of death or serious bodily injury to any person other than a trespasser.
- (2) Where conduct or a condition of property is prohibited without a permit, registration, certification, release, authorization, variance, exemption, or other license required under IC 22-14 or 22-15 or another statute.
- (3) Where conduct or a condition of property will conceal a violation of law.

Similar language is provided for local fire departments to issue emergency orders. See Ind. Code 36-8-17-9(b).

All emergency orders issued by the IDHS under Ind. Code § 22-12-7-6 must be approved by the State Fire Marshal or Executive Director of IDHS. This approval may be orally communicated to the person issuing the order, however, there must be a written record of the approval. Ind. Code § 22-12-7-6(c). Emergency orders issued by a fire department under Ind. Code § 36-8-17-9 must be approved by the State Fire Marshal. This approval may also be orally communicated and the IDHS is required to maintain a written record of the approval.

Emergency orders issued by the IDHS under Ind. Code § 22-12-7-6 may include any of the following orders:

- (1) Require a person who has taken a substantial step toward violating a law or has violated a law to cease and correct the violation.
- (2) Require a person who has control over property that is affected by a violation to take reasonable steps to:
 - (A) protect persons and property from the hazards of the violation; and
 - (B) correct the violation.
- (3) Require persons to leave an area that is affected by a violation and prohibit persons from entering the area until the violation is corrected.
- (4) Impose any of the following sanctions with respect to a permit, registration, certification, release, authorization, variance, exemption, or other license issued by the IDHS:

- (A) permanently revoke the license;
 - (B) suspend the license;
 - (C) censure the person to whom the license is issued
 - (D) issue a letter of reprimand to a person to whom the license is issued; or
 - (E) place a person to whom the license is issued on probation.
- (5) Impose on a person who has violated a law that may be enforced by the IDHS a civil penalty not to exceed \$250 for each day the violation occurs.

Emergency orders issued by a fire department under Ind. Code § 36-8-17-9 may only include the items identified in items (1) through (3) above.

Once issued, a party may request an evidentiary hearing to determine whether the order should be voided, terminated, modified, stayed, or continued. Ind. Code § 4-21.5-4-4. Emergency orders expire no later than 90 days after issuance or at an earlier date set in the order. However, emergency orders may be renewed during the pendency of any related proceedings under IC 4-21.5-3. Ind. Code § 4-21.5-4-5(b).

To summarize, emergency orders are orders that take effect immediately without notice or a hearing and may only be issued in limited circumstances. The issuance of these orders should be limited and reserved to emergency situations or when conduct is prohibited without a license. The issuance of emergency orders should be limited as it eliminates the opportunity to obtain a hearing or administrative review before an action is taken.

VI. POLICY

(A) Procedure for Issuing Emergency Orders by the IDHS.

(1) Approval by the State Fire Marshal or Executive Director and Delegation

In general, no emergency order may be issued unless explicitly approved by the State Fire Marshal or the Executive Director of the IDHS. Therefore, unless the issuance of an emergency order is explicitly approved in this policy or the authority to approve an emergency order has been delegated to subordinate staff by the State Fire Marshal in this policy or by another written delegation by the Executive Director of IDHS or the State Fire Marshal which shall be included as an addendum to this policy, all emergency orders must be approved by the State Fire Marshal or the Executive Director of the IDHS on a case-by-case basis prior to issuance.

The following is a list of instances the State Fire Marshal has approved for the issuance of an emergency order. Case specific approvals for the instances listed below are not necessary. Section Chiefs are free to require additional review or approvals, not outlined in this policy if deemed necessary.

1. Any instance where a permit, registration, certification, release, or other license is required for conduct but has not been obtained prior to the conduct occurring. Examples include, but are not limited to, construction occurring without a construction design release; sale of fireworks without a certificate of compliance; conducting an amusement or entertainment at a regulated place of amusement or entertainment without a permit; operating a regulated lift device without a permit; operating a regulated boiler or pressure vessel without a permit; operating a regulated amusement device without a permit.

2. Any instance where the rules of the Commission require immediate action to occur as a result of a violation. For example, enforcement of section 901.7 of the 2014 IN Fire Code which requires a building to be immediately evacuated or an approved fire watch be provided.

The following is a list of delegations of the State Fire Marshal to approve an emergency order.

1. At anytime the State Fire Marshal is absent, for whatever reason, the Section Chief of the appropriate Section of the IDHS charged with regulating the matter shall be delegated the authority to approve an emergency order on the State Fire Marshal's behalf. If both the State Fire Marshal and Section Chief are absent, the authority shall be delegated to the highest-ranking employee of the appropriate Section of the IDHS charged with regulating the matter that is present, however, before approval is granted in this instance, a request for approval from the Executive Director of the IDHS shall be attempted to be obtained first.

(2) Performance of Inspection

If during an inspection, audit, or any other appropriate type of review of a matter conducted by the IDHS, it is found that conduct or a condition of property:

- (1) presents a clear and immediate hazard of death or serious bodily injury to any person other than a trespasser;
- (2) is prohibited without a permit, registration, certification, release, authorization, variance, exemption, or other licensed required under IC 22-14 or 22-15 or another statute; or
- (3) will conceal a violation of law

an emergency order may be issued.

(3) Approval of Emergency Order

Emergency orders must be approved before issuance. Approvals must be obtained as follows:

- (1) If the emergency order is the result of an instance that the State Fire Marshal has classified as not requiring a case specific approval as identified above, then the emergency order may be issued through the current order processing system by the inspector or appropriate support staff who identified the issue. No oral or written approval is required to be obtained prior to issuance. However, a written note shall be included in the order processing system, that the emergency order was approved pursuant to this policy.
- (2) If the emergency order does not fall within the class of emergency orders mentioned in item (1), then case specific approval must be obtained from the State Fire Marshal, the Executive Director of the IDHS, or their appropriate delegate as identified above. The approval must be communicated orally or in writing, prior to issuance of the order, however, regardless of the manner in which the approval is communicated, it must be notated in the order processing system and include the date, time, and person who approved the emergency order.

(4) Drafting Emergency Order

Upon receipt of approval, whether generic or case specific, the emergency order shall be drafted in the order processing system. The order must contain the emergency order review rights, indicate the violations of the law (appropriate code) which are the basis for the order, and identify what is being ordered. Emergency orders shall be limited to ordering only that which is identified

in Ind. Code § 22-12-7-7. The language contained in the order portion of the order shall be reviewed and approved by the Office of General Counsel. Draft language for commonly issued emergency orders, previously approved by the Office of General Counsel is not required to be reviewed prior to issuance. The following is a list of commonly issued emergency orders and associated order language which has been approved by the Office of General Counsel:

Emergency Building Closure

Until this violation has been corrected:

- all individuals are required to leave this property;
- all individuals are prohibited from entering this property; and
- all individuals with control over the property are required to immediately close this property, except as required to cease and correct the violation.

Emergency Fire Watch

Unless an approved fire watch is implemented, until this violation is corrected:

- all individuals are required to leave this property;
- all individuals are prohibited from entering this property; and
- all individuals with control over the property are required to immediately close this property, except as required to cease and correct the violation.

Emergency Stop Work Order

All construction shall be immediately halted until this violation has been corrected.

Operating Without a Valid Operating Permit

The device shall not be operated until a valid operating permit is issued which covers the operation of the device.

Operating a Regulated Place of Amusement or Entertainment Without A Permit

All regulated amusement and entertainment use shall cease and be prohibited until a regulated place of amusement or entertainment permit or special event endorsement is issued to cover such use.

(5) Issuance of Order

Following the approval and drafting of the order, the order shall be served on all individuals who are required to comply with the order. Generally, this will be the person who has control over the property and the authority to correct the violation. Orders that require a building or other property to be closed or not operated or that halt construction shall also be affixed to the property to provide notice to any person who may come upon the property that the building shall not be occupied, the property shall not be operated, or the construction shall be halted. In many instances, the person in control of the property is the owner, however, it may also be a tenant or an operator. Following issuance, a certificate of service shall be completed by the person serving the order, which specifies the date the order was served, the method of service and who the order was served upon.

(B) Expiration and Renewal of Emergency Orders

Pursuant to Ind. Code 4-21.5-4-5, emergency orders expires no later than 90 days after issuance. Therefore, in conjunction with the issuance of any emergency order, an order shall also be issued under Ind. Code 4-21.5-3 (a nonemergency order). This process whereby an emergency order

and nonemergency order are issued in conjunction is currently in place and is done as a matter of course by simply including our emergency order review rights on the order. A copy of the current emergency order review rights is included below.

EMERGENCY OR TEMPORARY ORDER

This order is to notify you that the Department has determined that conduct or a condition of property:

- (1) presents a clear and immediate hazard of death or serious bodily injury to any person other than a trespasser;*
- (2) is prohibited without a permit, registration, certification, release, authorization, variance, exemption, or other license and the license has not been issued; or*
- (3) will conceal a violation of law.*

*This order is issued pursuant to IC 22-12-7-6 and IC 4-21.5-4 and must immediately be complied with, up to and until such time that: (1) it expires; (2) an order is issued by an administrative law judge voiding, terminating, modifying, or staying its effectiveness; or (3) the Department terminates its effectiveness. In conjunction with this emergency order, the Department additionally issues the order under IC 22-12-7-7 and IC 4-21.5-3-6 to ensure its permanency. Therefore, this order is must be complied with until such time that: (1) this order is overturned on review; (2) an administrative law judge issues a stay of enforcement; or (3) the Department terminates its effectiveness. For information on how to request an **informal review** or **administrative review** of this order, see below.*

(C) Rescinding, or Compliance with, Emergency Orders

Upon receipt of notification that a violation resulting in the issuance of an emergency order has been complied with, a reinspection (whether by reviewing photos, documents, or by performing a visual inspection onsite) shall be completed as soon as reasonably possible to determine whether compliance has been achieved and the order should be terminated. If compliance has not been achieved, then the order shall continue in effect. If compliance has been achieved, then a notice of compliance shall be issued. If it is found that the order has been violated, then sanction shall be issued. For example, if an order to halt construction is violated by performing construction, an order imposing fines and potential revocation of the design release may be issued. Additional policies and procedures may be put in place to govern the appropriate sanctions that should be imposed in any particular instance.

(D) Administrative Review of Emergency Orders

Emergency orders are subject to administrative review. However, the mere fact that a request for review has been filed does not suspend the effectiveness of the order. Requests for review are processed by the Fire Prevention and Building Safety Commission and its staff. If a request for review is granted, it is assigned to an administrative law judge from the Office of Administrative Law Proceedings. The order shall be complied with until it is overturned by an administrative law judge or our office agrees to terminate its effectiveness. If a request for administrative review is granted, the Office of General Counsel will represent the IDHS in the matter and may require employees of IDHS to produce documents or appear for any administrative review hearing.

(E) Alternatives to the Issuance of an Emergency Order

It should be noted that the issuance of an emergency order is not the only manner in which to order the closure of a building, the halt of construction, the suspension of operation of a device, or any other type of order that is typically issued in an emergency situation. If the elements for an emergency order do not exist, but it is necessary to take an emergency type corrective action, those orders may be issued as a nonemergency order under Ind. Code § 4-21.5-3-6. However, please note that these orders afford an opportunity for review prior to their effectiveness. These orders are not effective for 15 days, but do not need prior approval from the State Fire Marshal or the Executive Director. If an alternative action described here is desired, these requests shall be addressed on a case by case basis by the appropriate Section Chief, the State Fire Marshal, and a member of the Office of General Counsel unless another policy or procedure is put in place to address the issuance of any specific type of order in another manner.

(F) Emergency Orders Resulting In a Fire Watch

Please note, emergency orders instituting a fire watch under Section 403 of the 2014 IN Fire Code are required to be issued by the **fire chief**. The IDHS has no authority to issue an emergency order instituting a fire watch under this section. However, fire watches are required in a number of other sections in the 2014 IN Fire Code, including section 901.7. Ideally, fire watches instituted under section 901.7 should also be ordered by the local fire department as part of a fire watch requires an approved means for notifying the fire department. However, in jurisdictions where no local fire inspection program has been established or the IDHS is responsible for performing the inspection in question (for example, if related to an Amusement or Entertainment inspection), then the IDHS shall be responsible for enforcement and the issuance of any relevant emergency orders by following the procedures outlined in this policy.

As identified above, our emergency orders for fire watches either require the evacuation of the building, or a specified portion of a building, or the implementation of an approved fire watch. If the building is not evacuated and a fire watch is desired to be implemented, the fire watch must be conducted by an individual who is trained to:

1. identify and control fire hazards;
2. detect early signs of unwanted fire;
3. raise an alarm of fire; and
4. notify the fire department as necessary.

Proof of having sufficient training must be provided before a fire watch will be approved. At this time, there is no particular training that is necessary to comply with this requirement, but the person attempting to demonstrate their training is sufficient has the burden of proving they are trained as identified above. In addition to possessing sufficient training, one approved means for notification of the fire department is required. The means of communication must be acceptable to the local fire department.

Please note, depending on the particular section of the 2014 IN Fire Code that imposes the requirements of a fire watch, different requirements may apply and any language in this policy that conflicts with a specific provision of the 2014 IN Fire Code is void.

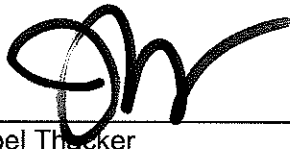
(G) Emergency Orders Issued by Fire Departments

Pursuant to Ind. Code § 36-8-17-9, fire departments may also issue emergency orders. However, unlike the statute pertaining to the IDHS, only the State Fire Marshal may approve these orders, not the Executive Director. Fire departments are authorized to act without case specific approval

when identified above. Additionally, any individual who has been delegated authority from the State Fire Marshal may also approve an emergency order to be issued by the fire department in accordance with this policy. For any emergency order that authority has not been generally granted for in this policy or that is not proceeding under a delegation of authority, only the State Fire Marshal may approve an emergency order of a fire department. Anytime case specific authority is granted for the issuance of an emergency order by a fire department, this approval shall be notated, if possible, in the order processing system maintained by the IDHS, by making a note in the records of the property the emergency order is being imposed upon. If the property does not exist in our order processing system, the property shall be created and the note shall be included in relation to the newly created property. However, if for any reason it is not reasonable to notate the emergency order in our order processing system a spreadsheet or some similar document shall be maintained that includes the details of the approval. At a minimum, the date of the approval shall be notated, the address or location of the property the approval was given for, and the type of order approved shall be included in the spreadsheet.

Please note, orders of fire departments are limited to ordering the items listed in Ind. Code § 36-8-17-9(d), which differs from the type of orders IDHS may issue by not including the authority to issue a \$250 fine or sanction a license.

Emergency orders of local fire departments are also recommended to comply with all other parts of this policy unless compliance with this policy would result in conflict with some other law.



Joel Thacker
State Fire Marshal

09-08-2021

Date